



**Public Hearing
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

AGENDA ITEM NO.: 28
AGENDA DATE: Thu 02/02/2006
PAGE: 1 of 2

SUBJECT: Conduct a public hearing on an appeal by applicant Tumbleweed Investment Joint Venture of the Zoning and Platting Commission's denial of applicant's extension requests for a site plan; Rancho La Valencia, SP-01-0356D, located at 9512 FM 2222.

AMOUNT & SOURCE OF FUNDING: N/A

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING Watershed Protection and **DIRECTOR'S**
DEPARTMENT:Development Review **AUTHORIZATION:** Joe Pantalion

FOR MORE INFORMATION CONTACT: George Zapalac, 974-3371; Nikki Hoelter, 974-2863; Joan Esquivel, 974-3371

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: The Zoning and Platting Commission denied appeal and denied three-year extension.

PURCHASING: N/A

MBE / WBE: N/A

The applicant is requesting a one-year administrative extension to an approved site plan, Rancho La Valencia, which would extend the life of the plan to February 14, 2006. They are also requesting a three-year extension, which would then extend the site development permit to February 14, 2009. The project proposes to construct 89 condominium units within 55 buildings, water quality and detention ponds, parking, drives and utilities on 9.748 acres. Current site conditions consist of two vacant buildings, the main drive, silt fencing, tree protection, utilities and a water quality pond.

The site plan was approved on February 14, 2002. At that time, the site was located within the City's two-mile ETJ, which did not provide for zoning regulations or enforcement. The project met all applicable regulations at that time.

On September 26, 2002, this site was annexed into the Full Purpose Jurisdiction of the City and given the zoning district designation of I-RR, interim rural residential. It's also located on an identified Hill Country Roadway, and subject to the Hill Country Roadway ordinance requirements. The applicant has requested that the site plan be maintained under a grandfathered status. However, the current site plan allows for commercial development, not condominiums, and, therefore, the condominiums would be considered a new project. Staff has made a determination to deny the extension request, because the site plan does not substantially comply with the requirements that would apply to a new application for site plan approval [Section 25-5-62(C)]. Specifically, this project does not comply with the current zoning district, I-RR or the Hill Country Roadway requirements.

The Zoning and Platting Commission heard the case on October 18, 2005 and upheld staff's



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recommendation to deny the appeal of the Director's denial of a one-year administrative extension to an approved site plan (5-4). City Code allows for Commission decisions on site plans to be appealed to the City Council. The Commission also upheld staff's recommendation to deny the three-year extension request, (9-0).

Tumbleweed Investment Joint Venture is appealing the Zoning and Platting Commission's decision to deny the appeal and the three-year extension request on the basis that the project is ongoing, and all infrastructure, utilities, and ponds have been constructed.

**RANCHO LA VALENCIA
SITE PLAN APPEAL OVERVIEW**

Proposed Development:

- The applicant proposes to construct 89 condominium units within 55 buildings, water quality and detention ponds, parking, drives and utilities on 9.74 acres.
- The site is located within the West Bull Creek, partially within the Edwards Aquifer Recharge Zone.
- The site plan was approved on 2/14/02; at that time the site was located within the 2-mile ETJ. At the time of approval, the plan complied with all applicable development regulations. It was not required to conform to zoning regulations and Hill Country Roadway requirements.
- On 9/26/02, the site was annexed into the Full Purpose Jurisdiction of the City, and given the zoning designation of I-RR, Interim Rural Residential.
- Currently located on a Hill Country Roadway, FM 2222.

Applicant Request:

- The applicant is requesting approval of a 1 year administrative extension to an approved site plan, which would extend the expiration of the site development permit to 2/14/05.
- In addition, the applicant is requesting an additional 3 year extension to the life of the site development permit, which would extend the permit to 2/14/08.

Development Issues:

- The development is located within the Lot 1, Block A Tumbleweed Subdivision. The proposed use for this subdivision was commercial.
- Project does not comply with the current zoning, I-RR, and has not requested a zoning change.
- The project would also be subject to the Hill Country Roadway requirements, but at this time is not in conformance.
- Two notices of violation are outstanding, one for construction activity outside the limits of construction, and one for development not in accordance with the released site plan.

Staff's Recommendation:

- Deny the applicant's request for a 1 year and 3 year extension to the site development permit, because it does not comply with the requirements that would

apply to a new application for site plan approval, Section 25-5-62(C). Specifically this project does not comply with the current zoning district I-RR nor the Hill Country Roadway requirements.

Zoning and Platting Commission Action:

- On October 18, 2005, ZAP upheld the Director's decision to not recommend the one year extension request and voted to deny the appeal, (9-0). On this same date ZAP also upheld staff's recommendation to deny the request for a 3 year extension (9-0).

**APPEAL OF AN ADMINISTRATIVE DECISION
FOR A SITE PLAN EXTENSION AND
REQUEST FOR A 3-YEAR EXTENSION**

CASE NUMBER: SP-01-0356D(XT) **ZAP DATE:** October 18, 2005
October 4, 2005

ADDRESS: 9512 RM 2222

PROJECT NAME: Rancho La Valencia

APPLICANT: Tumbleweed Investment Joint Venture (Charles Turner)
4309 Palladio
Austin, Tx, 78731

AGENT: LOC Consultants (Sergio Lozano)
1000 E. Cesar Chavez St., Suite 100
Austin, TX 78702

APPELLANT: Sergio Lozano

WATERSHED: West Bull Creek (Partially within Edwards Aquifer Recharge Zone)

AREA: 9.748 acres

EXISTING ZONING: I-RR, Interim-Rural Residential

PROPOSED USE: This project proposes to construct 89 condominium units within 55 buildings, water quality and detention ponds, parking, drives and utilities on 9.748 acres.

APPLICABLE WATERSHED ORDINANCE: Current Land Development Code for water quality.

CASE MANAGER: Nikki Hoelter, 974-2863
Nikki.hoelter@ci.austin.tx.us

PROJECT INFORMATION: (PRIOR TO ANNEXATION)

EXIST. ZONING: 2-mile ETJ **PROPOSED USE:** Condominiums

ALLOWED F.A.R.: N/A

MAX. BLDG. COVERAGE: N/A

MAX. IMPERV. CVRG.: 40%

REQUIRED PARKING: N/A

EXIST. USE: Vacant

SUBDIVISION STATUS: Lot 1, Block A, Tumbleweed Subdivision

ZONING AND PLATTING COMMISSION ACTION: Postponed to October 18, 2005, by the applicant, Consent (6-0).

PREVIOUS APPROVALS: C8-95-0061.0A; Lot 1, Block A, Tumbleweed Subdivision –
Approved 4/5/1996
SP-01-0356D; Rancho La Valencia site plan –
Approved 2/14/2002

BACKGROUND:

The site plan for this project was approved on February 14, 2002, which proposed 55 condominium buildings, water quality and detention ponds, parking, drives and utilities. At the time of approval the plan met all applicable regulations. The site is located on FM 2222, about ½ mile east of RM 620. Current site conditions consist of 2 vacant buildings, the main drive, silt fence, some tree protection, utilities and a water quality pond.

Prior to site plan approval the existing subdivision was submitted and approved, which allowed for commercial development on the 9.748 acre tract. A restrictive covenant was executed with the subdivision that required parkland be dedicated "before the property may be used or developed for any residential purpose". The parkland dedication fee was paid on February 14, 2002, which was the date of site plan approval.

At the time of approval of the both the subdivision and site plan, the subject property was located within the City of Austin's 2-Mile Extra Territorial Jurisdiction; therefore, not requiring the site plan to conform to zoning regulations, and Hill Country Roadway requirements. On September 26, 2002 this site was annexed into the Full Purpose Jurisdiction of the City, and given the zoning district designation of I-RR, interim rural residential. Since that time the owner or his agent has not requested the zoning be changed to conform to city regulations to allow for this development.

There have been two notices of violations given by the Environmental Inspector for construction activity outside the limits of construction at the wastewater receiving and off-site waterline tie in. Due to current litigation between the two owners, compliance has not been attained.

On February 14, 2005, the applicant submitted a request for a one year administrative extension to the site plan, which would extend the life of the plan to February 14, 2006. The director denied the request for a one year extension. After the applicant was informed of the denial of the extension on August 9, 2005, an appeal was filed the next day, August 10, 2005.

The applicant has also requested a 3 year extension to the site plan, due to the additional time needed by his client to work out legal issues with the owners. The request was made after the one year extension was denied in conjunction with the appeal.

SUMMARY COMMENTS ON SITE PLAN APPEAL:

After review by staff it was determined that this project did not meet the criteria for approval of an extension, because the site plan did not substantially comply with the requirements that would apply to a new application for site plan approval [Section 25-5-62(C)]. Specifically, this project does not comply with the current zoning district of I-RR, Interim Rural Residential nor the Hill Country Roadway requirements.

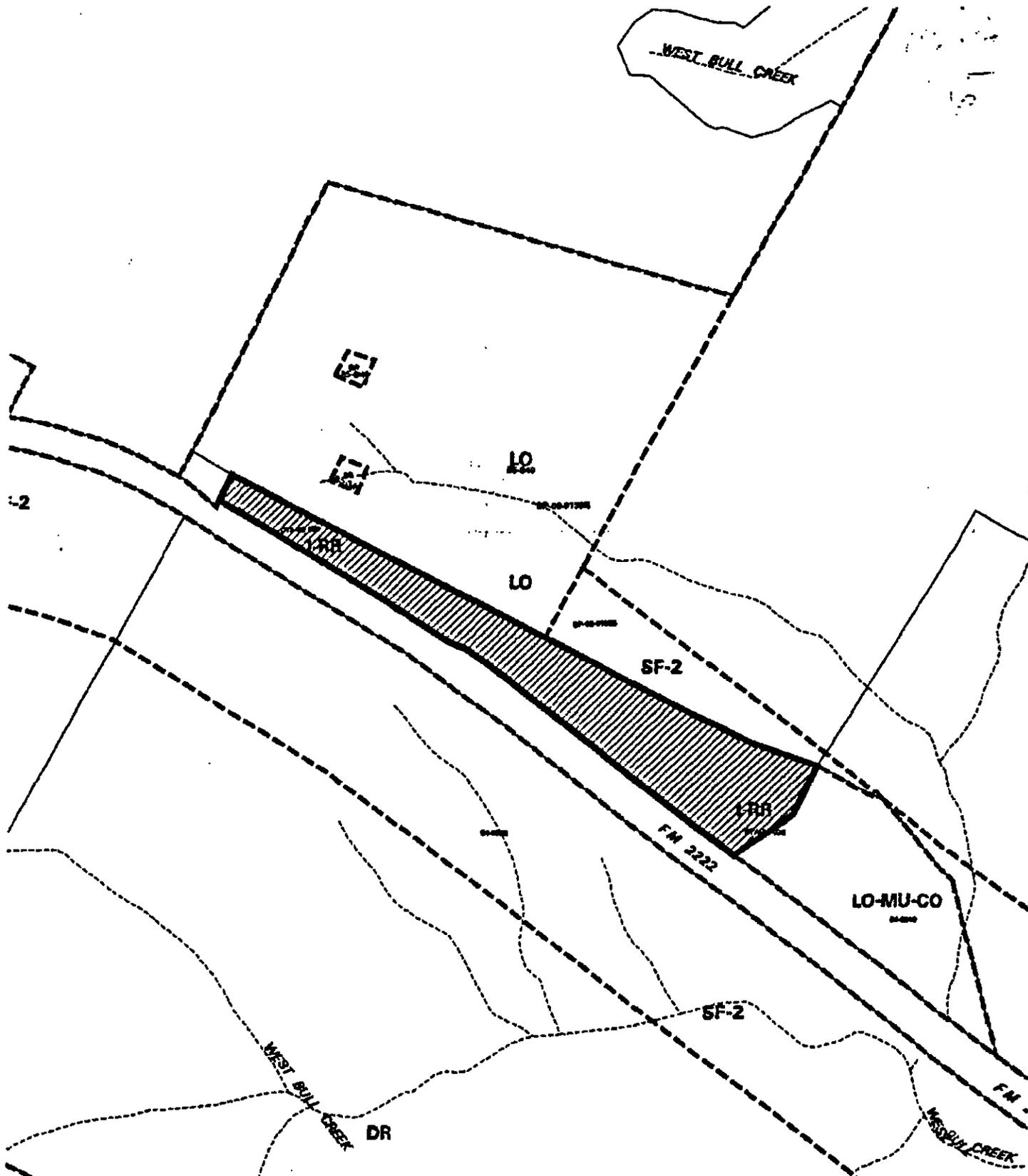
In order for this plan to comply with current Land Development Code regulations, it would need to receive waivers from Section 25-2-1123 – Construction on Slopes, 25-2-1124 – Building Height, 25-2-1125 – Location of On-site Utilities, 25-2-1127 – Impervious Cover, 25-2-1022 –

Native Trees (landscape plan), 25-2-1023 – Roadway Vegetative Buffer, 25-2-1024 - Restoring Roadway Vegetative Buffer, 25-2-1025 - Natural Area, 25-2-1026 – Parking Lot Medians and 25-2-1027 – Visual Screening. The Land Use Commission would be the authority to approve or deny these waivers from the Hill Country Roadway Ordinance, but at this time waivers have not been requested.

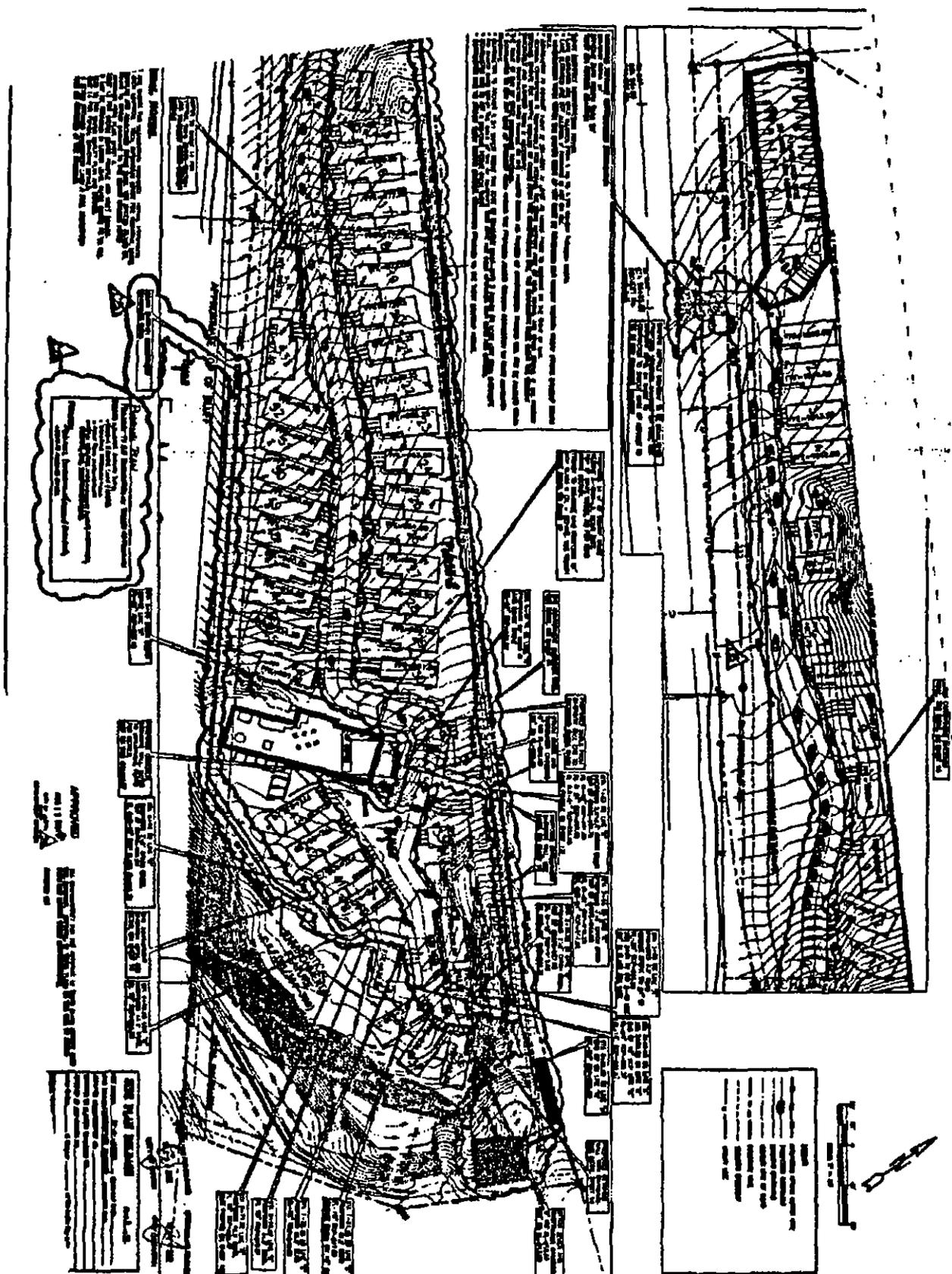
This plan would also be required to comply with the current zoning district regulations for I-RR, such as limit the height to 35 feet, decrease dwelling units to one unit, front setback of 40 feet, rear setback of 20 feet, decrease the building coverage to 20% and decrease the impervious cover to 25%. Current impervious cover is 40%; the height, building coverage and floor to area ratio is not known because applications which fall outside the full purpose jurisdiction are not required to provide that information. The Board of Adjustment would have the authority to approve any variances to the zoning regulations.

ISSUES:

The issue before the Commission is whether to grant or deny the appeal of the Director's decision to disapprove the site plan extension. If the appeal is denied, a new application conforming to current regulations is required. If the appeal is approved, the site plan would be extended for one year from the original expiration date, to February 14, 2006. The Commission also has the option to extend the site plan for up to three additional years beyond this date per the applicant's request.



 1" = 400'	SUBJECT TRACT 	SITE PLAN		CITY GRID REFERENCE NUMBER ES2
	PENDING CASE 	ZONING BOUNDARY 	CASE #: SP-01-0356D(XT) ADDRESS: 9512 FM 2222 RD SUBJECT AREA (acres): N/A	DATE: 05-09 INTLS: 6M



LOC Consultants
 10000 N. Loop West, Suite 1000
 Dallas, Texas 75243
 Phone: (214) 343-1111
 Fax: (214) 343-1112
 Email: loc@loc.com

A **RANCHO LA VALENCIA**
 9012 RR 5222
 AUSTIN, TEXAS
 THE PLAN, DRAWING AND DRAINAGE SYSTEM SHALL

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City of Austin Watershed Protection and Development Review Department
505 Barton Springs Road / P.O. Box 1088 / Austin, Texas 78767-8335

SITE PLAN APPEAL

If you are an applicant and/or property owner or interested party, and you wish to appeal a decision on a site plan application, the following form must be completed and filed with the Director of Watershed Protection and Development Review Department, City of Austin, at the address shown above. The deadline to file an appeal is 14 days after the decision of the Planning Commission, or 20 days after an administrative decision by the Director. If you need assistance, please contact the assigned City contact at (512) 974-2680.

CASE NO. SP-01-0356 D
PROJECT NAME Rancho Valencid
PROJECT ADDRESS 952 RR 2222
Austin, TX
APPLICANT'S NAME Sergio Lazano
CITY CONTACT Nikki Heltzer

DATE APPEAL FILED 11-01-05
YOUR NAME Sergio Lazano-Sanchez, PE
SIGNATURE [Signature]
YOUR ADDRESS 1000 E Cesar Chavez
Austin TX 78702
YOUR PHONE NO. (512) 499-0908 WORK
(512) 581-1236 HOME

INTERESTED PARTY STATUS: Indicate how you qualify as an interested party who may file an appeal by the following criteria: (Check one)

- I am the record property owner of the subject property
- I am the applicant or agent representing the applicant
- I communicated my interest by speaking at the Planning Commission public hearing on (date) _____
- I communicated my interest in writing to the Director or Planning Commission prior to the decision (attach copy of dated correspondence).

In addition to the above criteria, I qualify as an interested party by one of the following criteria: (Check one)

- I occupy as my primary residence a dwelling located within 500 feet of the subject site.
- I am the record owner of property within 500 feet of the subject site.
- I am an officer of a neighborhood or environmental organization whose declared boundaries are within 500 feet of the subject site.

DECISION TO BE APPEALED*: (Check one)

- Administrative Disapproval/Interpretation of a Site Plan
- Replacement site plan
- Planning Commission Approval/Disapproval of a Site Plan
- Waiver or Extension
- Planned Unit Development (PUD) Revision
- Other: _____

Date of Decision: 8-01-05
 Date of Decision: _____
 Date of Decision: 10-18-05
 Date of Decision: _____
 Date of Decision: _____

* Administrative Approval/Disapproval of a Site Plan may only be appealed by the Applicant.

STATEMENT: Please provide a statement specifying the reason(s) you believe the decision under appeal does not comply with applicable requirements of the Land Development Code:

Please see attached letter.

(Attach additional page if necessary.)

Applicable Code Section: _____



November 1, 2005

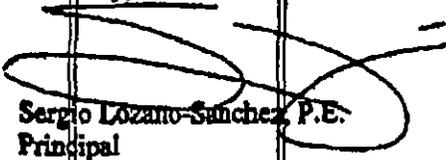
City of Austin
Watershed Protection and Development Review Department
505 Barton Springs Road
Austin, Texas 78704

RE: Rancho Valencia

To Whom It May Concern:

We disagree with the City staffs determination on denying the requested exemption for the above referenced project because this project has been ongoing. All the infrastructure has been constructed and inspected, the utility connections for each one of the units was installed and inspected, all the water quality and detention ponds have been completed and the only item remaining to complete this project is the construction of the single family dwellings.

Sincerely,


Sergio Lozano-Sanchez, P.E.
Principal

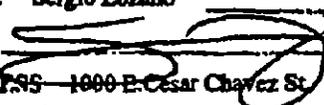
CC: File



City of Austin Watershed Protection and Development Review Department
505 Barton Springs Road / P.O. Box 1088 / Austin, Texas 78767-8835

SITE PLAN APPEAL

If you are an applicant and/or property owner or interested party, and you wish to appeal a decision on a site plan application, the following form must be completed and filed with the Director of Watershed Protection and Development Review Department, City of Austin, at the address shown above. The deadline to file an appeal is 14 days after the decision of the Planning Commission, or 20 days after an administrative decision by the Director. If you need assistance, please contact the assigned City contact at (512) 974-2680.

CASE NO. <u>SP-01-0356d</u>	DATE APPEAL FILED <u>8/10/05</u>
PROJECT NAME <u>Rancho Valencia</u>	YOUR NAME <u>Sergio Lozano</u>
PROJECT ADDRESS <u>9512 FM RR22</u>	SIGNATURE 
APPLICANT'S NAME <u>Sergio Lozano</u>	YOUR ADDRESS <u>1000 E. Cesar Chavez St Austin, Texas 78702</u>
CITY CONTACT <u>Nikki Hoehner</u>	YOUR PHONE NO. (512) 499 0908 <u>WORK</u> (512) 587 7236 <u>HOME</u>

INTERESTED PARTY STATUS: Indicate how you qualify as an interested party who may file an appeal by the following criteria: (Check one)

- I am the record property owner of the subject property
- I am the applicant or agent representing the applicant
- I communicated my interest by speaking at the Planning Commission public hearing on (date) _____
- I communicated my interest in writing to the Director or Planning Commission prior to the decision (attach copy of dated correspondence).

In addition to the above criteria, I qualify as an interested party by one of the following criteria: (Check one)

- I occupy as my primary residence a dwelling located within 500 feet of the subject site.
- I am the record owner of property within 500 feet of the subject site.
- I am an officer of a neighborhood or environmental organization whose declared boundaries are within 500 feet of the subject site.

DECISION TO BE APPEALED*: (Check one)

- | | |
|---|----------------------------------|
| <input type="checkbox"/> Administrative Disapproval/Interpretation of a Site Plan | Date of Decision: _____ |
| <input type="checkbox"/> Replacement site plan | Date of Decision: _____ |
| <input type="checkbox"/> Planning Commission Approval/Disapproval of a Site Plan | Date of Decision: _____ |
| <input checked="" type="checkbox"/> Waiver or Extension | Date of Decision: <u>8/10/05</u> |
| <input type="checkbox"/> Planned Unit Development (PUD) Revision | Date of Decision: _____ |
| <input type="checkbox"/> Other: _____ | Date of Decision: _____ |

*Administrative Approval/Disapproval of a Site Plan may only be appealed by the Applicant.

STATEMENT: Please provide a statement specifying the reason(s) you believe the decision under appeal does not comply with applicable requirements of the Land Development Code:

As discussed in a telephone conversation between Susan Scallon and myself, the reason why the particular project has not proceed with the construction of the dwelling units, due to pending litigation. This project has continued progress during the life of the site plan i.e. the past three years all infrastructure has been finalized, including Water, Water Waste Water, Water Quality and Detention Ponds. Building Permits we were requested for 6 units but no activity was taken in this respect due to pending litigation.

Applicable Code Section: _____



August 8, 2005

Nikki Hoelter
City of Austin
505 Barton Springs
Austin, Texas 78704
VIA FACSIMILE
(512) 974-3010

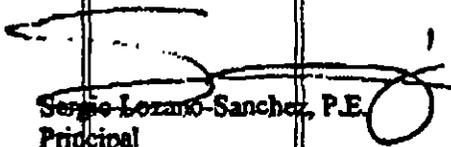
RE: Rancho Valencia (SP-01-0356D)

Dear Nikki,

Via this letter, I am respectfully requesting you to extend the above referenced site plan for an additional period of three years, which is the amount of time my client needs to complete the project to it's entirety. I believe this request will have to be considered by the Planning Commission and/or City Council and may take some time to be heard and approved.

Please inform me of any modifications to our application or any additional information in order to be recognized for this extension in time.

Sincerely,


Sergio Lozano-Sanchez, P.E.
Principal

CC: File
Eddy Jones

Hoelter, Nikki

From: Peter Torgrimson [petertorgrimson@prodigy.net]
Sent: Tuesday, October 04, 2005 1:49 PM
To: Betty Baker; Melissa Hawthorne; John Philip Donisi; Jay A. Gohil; Clarke Hammond; Janis Pinnelli; Keith Jackson; Joseph Martinez; Teresa Rabago
Cc: Hoelter, Nikki
Subject: RE: SP-01-0356D(XT)- 0512 2222 Site Plan Extension Appeal Hearing - Rancho La Valencia

Commissioners,

Please deny the Rancho La Valencia site plan extension and its appeal (agenda items 3 and 4) at the October 4 Zoning and Platting Commission meeting.

This development should conform to the established development requirements for the City of Austin, in particular the Land Development Code for new site plan approval applications, the Hill Country Roadway Ordinance and all current zoning.

Thank you,

**Peter Torgrimson
Regional Affairs Coordinator
Long Canyon Homeowners Association, Inc.
Long Canyon Phase II Homeowners Association, Inc.**

Hoelter, Nikki

From: Skip Cameron [scameron@austin.rr.com]
Sent: Wednesday, September 28, 2005 11:32 AM
To: Betty Baker; Melissa Hawthorne; John Phillip Donist; Jay Gohlt; Clarke Hammond; Janis Pinnell; Keith Jackson; Joseph Martinez; Teresa Rabago; Hoelter, Nikki
Subject: SP-01-0356D(XT)- Oct. 4 - 9512 2222 Site Plan Extension Appeal Hearing -

Please see that this site plan extension and its appeal are denied. The site plan does not comply with the requirements of the Land Development Code that would apply to a new application for site plan approval. The site is now within the City's full purpose jurisdiction and would be required to comply with current zoning and the Hill Country Roadway ordinance.

Skip Cameron, President
Bull Creek Foundation
8711 Bluegrass Drive
Austin, TX 78759-7801
(512) 794-0531

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for more information www.bullcreek.net

For a better people mobility solution see www.acprt.org

Hoelter, Nikki

From: Carol Lee [clee@austin.rr.com]
Sent: Thursday, September 29, 2005 3:20 PM
To: Hoelter, Nikki; Teresa Rabago; Betty Baker; Clarke Hammond; Janis Pinnell; Jay Gohl; John Philip Donis; Joseph Martinez; Keith Jackson; Melissa Hawthorne
Subject: 8512 2222 Site Plan Extension Appeal Hearing - Rancho La Valencia

Dear Commission Members and CofA Planner, I am writing to ask that you support denial of the site plan extension request for SP-01-0356D(XT) that is scheduled for hearing on 4 October 2005.

The site plan does not comply with the requirements of the Land Development Code that would apply to a new application for site plan approval. The site is now within the City's full purpose jurisdiction and should be required to comply with current zoning and restrictions, including the Hill Country Roadway Ordinance.

Sincerely,
Carol Lee
Glenlake Neighborhood
Austin, TX
clee@austin.rr.com
512.794.8250

From: Edwin B. King [mailto:Kingsace2@aol.com]
Sent: Thursday, January 26, 2006 8:20 AM
To: Wynn, Will; Thomas, Danny; Alvarez, Raul; Dunkerley, Betty; Kim, Jennifer; Leffingwell, Lee; McCracken, Brewster
Cc: Hoelter, Nikki
Subject: Please deny site plan extensions - Rancho La Valencia, January 26, 2006, Item 68]

Mayor and Councilmembers,
Please deny the site plan extensions (both 1 year and 3 year) requested for the Rancho La Valencia development (Case number SP-01-0356D). This is Agenda Item Number 68 at the January 26, 2006 City Council meeting.

This development should conform to the established development requirements for this corridor. Currently it does not. Other developers in this area are conforming. A prime example is the Colina Vista development which is adjacent to this Rancho la Valencia development. Both of these developments were originally planned for use other than residential. However, the Colina Vista development is following the current development requirements while Rancho La Valencia is not. I see no compelling reasons why this developer should be given special, preferential treatment. There are several reasons why the developer should not be given any preferential treatment. These are detailed in the Development Issues section of the Agenda Item information packet.

Thank you,

E. B. King
President
2222 Coalition of Neighborhood Associations, Inc.
6305 Fern Spring Cove
Austin, TX, 78730

MEMORANDUM

TO: Betty Baker, Chair and Members of the Zoning & Platting Commission

FROM: Dora Anguiano, ZAP Commission Coordinator
Neighborhood Planning and Zoning Department

DATE: January 5, 2006

SUBJECT: ZAP Commission Summary

Attached is a ZAP Commission summary, which will be forwarded to the City Council.

CASE # SP-01-0356D(XT) Site Plan Appeal

3. **Appeal:** SP-01-0356D(XT) - Rancho La Valencía
Location: 9512 FM 2222 Rd., West Bull Watershed
Owner/Applicant: Tumbleweed Investment Joint Ventures (Charles Turner)
Agent: LOC Consultants (Sergio Lozano)
Request: Appealing the director's decision to deny a 1 year extension.
Staff Rec.: NOT RECOMMENDED
Staff: Nikki Hoelter, 974-2863, nikki.hoelter@ci.austin.tx.us
Watershed Protection and Development Review
4. **Site Plan Extension:** SP-01-0356D(XT) - Rancho La Valencia
Location: 9512 FM 2222 Rd., West Bull Watershed
Owner/Applicant: Tumbleweed Investment Joint Ventures (Charles Turner)
Agent: LOC Consultants (Sergio Lozano)
Request: 3-year site plan extension
Staff Rec.: NOT RECOMMENDED
Staff: Nikki Hoelter, 974-2863, nikki.hoelter@ci.austin.tx.us
Watershed Protection and Development Review

SUMMARY

Nikki Hoelter gave staff presentation to the commission.

Commissioner Baker – "In addition to appealing the Director's decision to deny the extension, they are also asking for a 3-year extension.

Commissioner Jackson - If the park fees aren't extended, do they get their park fees back?

Ms. Hoelter – "No sir, they can not get their park fees returned".

George Zapalac – The park land fees would not be refunded; they could be applied to a subsequent user of the property, if someone else came in or for a new site plan that was submitted for the property; the fees could be applied towards that.

Commissioner Baker – "So this agent could ask that this be transferred to another project?

Mr. Zapalac – That's correct.

Commissioner Jackson – What if the subsequent project is much different than this project?

Mr. Zapalac – they still will not get a refund; once their fees are paid, it is put into the Park's Department budget and used for the purchase of parkland.

There was further discussion regarding the parkland fee.

Sergio Lozano, applicant, gave his presentation to the c ommission.

Commissioner Donisi – Has the applicant been red tagged?

Mr. Lozano – We had been red tagged because one of the houses had encroached into BCCP with some boulders; that was the only red tag that I'm aware of.

Commissioner Donisi – The investment would not be lost if this was not extended, you could apply for a variance, could you not?

Mr. Lozano – "I'm sure we could apply for a variance. The issue is that we have electric, water and other amenities.

Commissioner Hawthorne – If you had to comply with the setback ordinance, what would that mean for you as far as how many units, because this is a long narrow tract?

Mr. Lozano – We will loose approximately 23 units that will fall within the 100-foot setback from the property line.

Commissioner Hawthorne – And the roadways are already constructed and pad built?

Mr. Lozano – Yes; only two homes have been built.

Commissioner Hawthorne – But your utilities are stubbed out at each location?

Mr. Lozano – Yes.

Commissioner Hawthorne – And the ponds are in?

Mr. Lozano – Yes.

Commissioner Hawthorne – Our backup talks about more than 1 red tag; tell me more about the red tag.

Mr. Lozano – If I recall, we had one red tag at the beginning of the project that had to do with the contractor working outside the limits of his work area; in addition to the removal of 3 trees that should have been left in place that were cut down. We agreed to replace the trees. The second red tag was the encroaching into the Balcones Canyon Land Nature Preserve with some boulders.

Commissioner Baker – What about the cut and fill? And also the construction and the waste water receiving and off-site water line?

Mr. Lozano – I do not know about those red tags.

Commissioner Hawthorne – You also mentioned that this property is on a bluff?

Mr. Lozano - Yes.

Commissioner Hawthorne - From where the roadway ends and the property line begins, where's the bluff located?

Mr. Lozano - Towards the eastern portion of the property, at the very end of the property.

Commissioner Jackson - This has been built as condominiums; are you going to build the whole project at one time or are you building homes as one or two people buy... some of these must be duplexes.

Mr. Lozano - The idea is to be able to sell 6 homes at a time and then as the progress moves forward will complete the project in 2 years.

Commissioner Jackson - And there are two structures currently on the ground?

Mr. Lozano - Yes sir.

Commissioner Jackson - Can you tell me which two?

Mr. Lozano - Lot 20 and 21.

Commissioner Baker - Where there any inspections or approvals or anything for planning the work etc. that has been mentioned; as far as being stubbed out?

Ms. Hoelter - No, as far as I know there was no permits or inspections for plumbing or electric. It may have been done prior to annexation, but our records do not indicate any permits pulled or inspections made.

Commissioner Baker - Does the City know whether it actually exists; as far as stub out for electricity, water etc. Is it on the site? Do we know?

Ms. Hoelter - Yes; there are on site utilities that I can verify.

Mr. Zapalac - I have more information about the park land fees; the City is required to expend the funds, that are posted for parkland, within 5-years of the date they receive. Unless at the end of that 5-year period, less than 50% of the project has been constructed; at that time the fees can be extended another 5-years. If the City does not expend the funds by the deadline and the actual number of residential units constructed is less than the number assumed at the time that the fee was calculated, then the owner may request a refund and could receive a prorated share of the refund.

Commissioner Baker - Thank you.

Commissioner Jackson – We heard of a red tag for cut and fill but the backup only says that there is a red tag for two violations for construction outside the limits of construction for water and wastewater tie in; has there been a cut and fill violation?

Ms. Hoelter – My records indicate that the exact violations that were red tagged were failure to provide adequate erosion and sedimentation controls and the other was activity outside the limits of construction at the water and wastewater receiving and off-site water line tie in; and the second notice was for development not in accordance with the release site plan; but no, I did not have anything that said cut and fill.

FAVOR

No speakers.

OPPOSITION

No Speakers.

Commissioner Martinez and Gohil moved to close the public hearing.

Commissioner Donisi – I move to approve staff recommendation on Item #3.

Commissioner Martinez – Second.

Commissioner Jackson – I'll make a substitute motion that we grant the 1-year site plan extension.

Commissioner Hawthorne – I'll second that.

Commissioner Jackson spoke to his motion.

Commissioner Hammond – A 1-year extension would take them to February 2006, right?

Commissioner Jackson – Yes; we're only working on item #3, which was there first request; there is a second case.

Commissioner Donisi – Spoke against the motion. Mr. Lozano has come before us many times; my concern is the arguments that were before us, they are arguments that would be persuasive for a variance from the Hill Country Roadway Ordinance.

Motion carried for Item #3. (5-4)

ITEM # 4

Commissioner Donisi – I'll move for the staff's recommendation.

Commissioner Pinnelli – Second

Commissioner Baker – Item #4 is to deny the request for a 3-year extension. All in favor say aye.

Motion carried. (9-0)